

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 11, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FAYE IRENE GUENTHER, an
individual,

Plaintiffs,

v.

JOSEPH H. EMMONS, individually
and OSPREY FIELD CONSULTING
LLC, a limited liability company,

Defendants.

NO. 2:22-CV-0272-TOR

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

BEFORE THE COURT is Defendants' Motion for Summary Judgment (ECF No. 110) and Plaintiff's Motion for Partial Summary Judgment (ECF No. 104). These matters were submitted for consideration with oral argument on December 5, 2024. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, Plaintiff's Motion for Partial Summary Judgment (ECF No. 104) is **denied** and Defendants' Motion for Summary Judgment (ECF No. 110) is **granted**.

BACKGROUND

This case concerns a union-related speech dispute. ECF No. 1-2. On March 2, 2022, Plaintiff filed a Complaint in Spokane County Superior Court, raising claims for defamation and false light. ECF No. 1-2 at 10–12, ¶¶ 4.1–5.2. The following facts are undisputed by the parties.

The Merger of Locals 21 and 1439

Plaintiff, Faye Guenther, was the president of United Foods and Commercial Workers (“UFCW”) Local 21, which before merging with Local 1439, had roughly 44,000 members. ECF No. 125 at 13. In October 2021, Plaintiff and then Local 1439 president, Eric Renner (“Renner”), began discussions of merging the two unions. *Id.* at 33. The United Food and Commercial Workers (“UFCW”) International Union requires local unions to request approval to begin formal discussions regarding the merging of local unions. ECF No. *Id.* at 35. On October 28, 2021, Plaintiff addressed a letter to UFCW International President Marc Perron requesting permission to engage in formal merger discussions of Locals 21 and 1439. ECF No. 125 at 34-35. On December 2, 2021, UFCW International approved UFCW 21 and 1439’s request. *Id.* at 39-40.

Between December 9 and 13, 2021, Plaintiff and Renner discussed the proposed merger with key staff at Locals 21 and 1439 but had not publicly announced the merger. *Id.* at 40. On December 14, 2021, Locals 21 and 1439

1 respective boards recommended putting the merger question to a vote of their
2 respective members. *Id.* at 41. Local 21 announced the proposed merger on its
3 webpage December 17, 2021, urging members to vote in favor of it. ECF No. 125
4 at 42-43. Local 21 also mailed notice to its membership on January 6, 2022,
5 providing dates, times, and places of meeting where members could vote. *Id.* at
6 42. From January 6-20, 2022, Local 1439 held meetings during which members
7 voted on the merger, and Local 21 held meetings for its members to vote from
8 February 9-12, 2022. *Id.* at 43. Only 196 of the approximately 7,800 members of
9 Local 1439 voted on the merger, while 218 of the approximately 44,000 members
10 of Local 21 voted. *Id.* at 47-48. Both Locals approved the merger. ECF No. 125
11 at 47, 48.

12 The Flyer

13 Dan Clay (“Clay”) is the president of Local 555, a UFCW affiliate in
14 Oregon with approximately 30,000 members. *Id.* at 16. On November 13, 2021,
15 at Clay’s direction, Mike Selvaggio, Local 555’s contracted political director,
16 mailed approximately 1,000 flyers to selected stores across Washington employing
17 UFCW members. *Id.* at 52-53. Selvaggio created the flyer after a discussion with
18 Clay on talking points and made efforts to conceal their origins by excluding a
19 return address. *Id.* at 53, 54. The flyer stated:

20 ATTENTION UFCW MEMBERS

1 The in-union “Sexual Harassment club” is at it again!!

2 First Faye Gunther [sic] (President of Local 21) helped former 367
3 President Angel Gonzalez cover up his harassment charges and paid
him off in exchange for installing her puppet, Mike Hines.

4 Now she’s helping Eric Renner (the Local 1439 President) hide from
5 sexual harassment charges and land a cushy new gig with Local 21
through a forced merger.

6 OUR UNION SHOULD BE LOOKING OUT FOR US

7 NOT PROTECTING HARASSERS!

8 It’s time to STOP THE COVERUPS!

9 VOTE NO ON ANY MERGER!

10 ECF No. 128 at 34.

11 On December 21, 2021, an email repeating the accusations was sent to
12 several UFCW International Vice Presidents (“IVPs”). ECF No. 125 at 54. Flyers
13 were also posted in person at targeted stores around Spokane. *Id.* at 56. Selvaggio
14 asked Joseph Emmons (“Emmons”) around January 5, 2022 to carry-out the in-
15 person distribution. *Id.* at 58. Selvaggio explained to Emmons that the flyer
16 advocated against the merger and involved accusations that leaders accused of
17 sexual harassment were vying for leadership roles. *Id.* at 59, 60. Emmons asked
18 Selvaggio for the basis of the allegations in the flyer, which Selvaggio confirmed
19 to be supported by investigations and UFCW member social media posts. *Id.* at
20 61, 62. Emmons did not conduct any further inquiry into whether the flyer

1 statements were false. *Id.* at 63. After this discussion, Selvaggio emailed Emmons
2 the flyers who printed them and distributed them in person at stores around
3 Spokane. ECF No. 125 at 80-81.

4 Plaintiff subsequently filed a complaint alleging claims of defamation and
5 false light against Defendants. Plaintiff alleges the statements were patently false
6 and defamatory and alleges she suffered losses as a result of the defamatory
7 statements in the form of investigation costs, attorneys' fees, the assignment of
8 additional staff to address the flyers, reimbursed expenses due to the diversion of
9 staff, and reputational harm. *Id.* at 9–10, ¶¶ 3.59–3.61.

10 DISCUSSION

11 I. Summary Judgment Standard

12 The Court may grant summary judgment in favor of a moving party who
13 demonstrates “that there is no genuine dispute as to any material fact and that the
14 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In ruling
15 on a motion for summary judgment, the court must only consider admissible
16 evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002).
17 The party moving for summary judgment bears the initial burden of showing the
18 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
19 317, 323 (1986). The burden then shifts to the non-moving party to identify
20 specific facts showing there is a genuine issue of material fact. *See Anderson v.*

1 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla
2 of evidence in support of the plaintiff’s position will be insufficient; there must be
3 evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

4 For purposes of summary judgment, a fact is “material” if it might affect the
5 outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is
6 “genuine” only where the evidence is such that a reasonable jury could find in
7 favor of the non-moving party. *Id.* The Court views the facts, and all rational
8 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*
9 *Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted
10 “against a party who fails to make a showing sufficient to establish the existence of
11 an element essential to that party’s case, and on which that party will bear the
12 burden of proof at trial.” *Celotex*, 477 U.S. at 322.

13 Both parties move for summary judgment. Plaintiff moves for summary
14 judgment as to her defamation claim (ECF No. 104), while Defendants move for
15 summary judgment as to all claims (ECF No. 110). Therefore, the Court will
16 address each claim in turn.

17 **II. Defamation Claim**

18 Plaintiff argues summary judgment as to her defamation claim is proper
19 because it is undisputed that defendant, Joseph H. Emmons (“Emmons”), falsely
20 accused Plaintiff of covering up sexual harassment by Angel Gonzalez and paid

1 him off to install her puppet, Mike Hines, as president of UFCW Local 367. ECF
2 No. 104 at 7.

3 “To establish a prima facie defamation claim, the plaintiff must show (1)
4 that the defendant’s statement was false, (2) that the statement was unprivileged,
5 (3) that the defendant was at fault, and (4) that the statement proximately caused
6 damages.” *Alpine Indus. Computers, Inc. v. Cowles Pub. Co.*, 114 Wash. App.
7 371, 378 (Wash. Ct. App. 2002). The level of fault needed to satisfy a defamation
8 claim depends on the plaintiff’s status as a private or public figure. When a
9 plaintiff is a private figure, they need only establish the defendant was negligent.
10 *LaMon v. Butler*, 112 Wash. 2d 193, 197 (1989). However, “[w]hen the plaintiff is
11 a public figure or public official, the degree of fault required is actual malice.”
12 *Clardy v. Cowles Publ’g Co.*, 81 Wash. App. 53, 57 (Wash. Ct. App. 1996).

13 Defendants do not dispute the first two elements but rather contend that
14 because Plaintiff qualifies as a public figure for purposes of a defamation claim,
15 she must show actual malice with clear and convincing evidence, which
16 Defendants argue Plaintiff has failed to do here. ECF No. 110 at 8.

17 A. Limited Public Figure

18 A private figure may become a limited purpose public figure if they
19 “voluntarily inject themselves or are drawn into a public controversy and thereby
20 become public figures for a limited range of issues.” *Clardy*, 81 Wash. App. at 59.

1 To make such assessment, the Court must first find that the statement involves a
2 public controversy, i.e. matter of public concern, before then applying a set of
3 nonexclusive considerations including whether:

4 (1) the plaintiff had access to channels of effective communication;
5 (2) the plaintiff voluntarily assumed a role of special prominence in
6 the public controversy; (3) the plaintiff sought to influence the
7 resolution or outcome of the controversy; (4) the controversy existed
8 prior to the publication of the defamatory statement; and (5) the
9 plaintiff retained public-figure status at the time of the alleged
10 defamation.

11 *Id.* at 59, 60.

12 As to the first step, the parties disagree on what makes a matter of public
13 concern. Defendant argues the statements on the flyers were a matter of public
14 concern because they were made in connection to a political campaign concerning
15 a former employees' departure. ECF No. 110 at 16. Plaintiff disagrees and
16 contends that a public controversy for defamation purposes requires the presence
17 of public debate, thus no public controversy existed at the time the statements were
18 made here because there was no public debate on the proposed merger. ECF No.
19 115 at 14-15.

20 Defendant primarily relies on a string of cases that address matters of public
concern in the context of anti-SLAPP statutes. *See, e.g., Spratt v. Toft*, 180 Wn.
App. 620, 632 (2014); *Hailstone v. Martinezx*, 169 Cal. App. 4th 728, 738 (2008);
Macias v. Hartwell, 55 Cal. App. 4th 669 (1997). Washington's anti-SLAPP

1 statute, similar to others in other states, was enacted to prevent a chilling effect to
2 an individual's legitimate right of free speech. *Spratt*, 180 Wash. App. at 629.
3 Essentially, a party may strike a claim that is based on an action involving public
4 participation if that party shows it targets protected activity, e.g., free speech. *Id.*
5 at 628. The burden then shifts to the opposing party to show clear and convincing
6 evidence they would prevail on their claim. *Id.* at 628-629. The underlying
7 purpose of anti-SLAPP statutes is to protect participants in public controversies
8 from frivolous lawsuits. *Id.* at 630. Thus, the "matter of public concern" in the
9 anti-SLAPP context is meant to identify protected speech.

10 A matter of public concern in the context of a defamation claim is meant to
11 identify public versus private figures, not protected speech. "[T]he most important
12 factor distinguishing public and private plaintiffs is the assumption of the risk of
13 greater public scrutiny of public life." *Valdez-Zontek v. Eastmont Sch. Dist.*, 154
14 Wash. App. 147 (2010). However, even with that distinction, the Court agrees
15 with Defendant that the flyer was a statement on a matter of public concern.
16 "Whether speech addresses a matter of public concern must be determined by the
17 expression's content, form and context as revealed by the entire record." *Vern*
18 *Sims Ford, Inc. v. Hagel*, 42 Wash. App. 675, 682. The flyer regarded the merger
19 of two unions, one of which Faye Guenther was president of, that had a combined
20 membership of over 50,000 people. ECF No. 121 at 5, 20. In fact, Local 21, even

1 prior to the merger, was the largest UFCW local union in the United States. *Id.* at
2 6. Plaintiff and Renner began formal discussions of merging Local 21 and Local
3 1439 in December 2021. ECF No. 125 at 49. After the unions' respective boards
4 approved a member vote on the merger, Local 1439 gave notice of the merger vote
5 to its members on December 17, 2021. ECF No. 113-24 at 2. On January 6, 2022,
6 Local 21 mailed formal notice of meetings to vote to its union's members. ECF
7 No. 104 at 10.

8 Plaintiff's primary argument that no public controversy existed is that no
9 public campaign of the merger occurred. ECF No. 115 at 18-19. The Court
10 disagrees. Notice of the merger vote was given to over 50,000, with notice to
11 Local 21 members being directly mailed to their homes. ECF Nos. 125 at 42, 107
12 at 113. Additionally, notice of the merger vote and language in favor of the merger
13 was published on Local 21's website December 17, 2021. ECF No. 10-19 at 2.
14 Finally, if the merger succeeded, Plaintiff would be named president of the
15 resulting union. The flyer, which was distributed before the merger vote took
16 place, directly concerned the proposed merger and alleged misconduct of
17 leadership. It was not an allegation concerning Plaintiff's private life but alleged
18 conduct concerning union matters. The Court finds that the flyer's speech was in
19 connection to an existing public controversy. Now the Court must analyze the
20 limited figure nonexclusive factors.

1 *1. Access to media*

2 The Court finds Plaintiff had access to channels of effective communication.
3 As President of Local 21, Plaintiff's duty was to oversee the operations of the
4 union. ECF No. 113-1 at 37. Plaintiff had access to emails of all Local 21's
5 members and presumably all the employees. *Id.* at 6. It is also undisputed that
6 over the course of three years, Plaintiff had fourteen press appearances or media
7 quotations. ECF No. 128 at 58.

8 *2. Voluntariness and nature of role*

9 A person becomes a public figure only if he voluntarily "draw[s]
10 attention to himself" or uses his position in the controversy "as a
11 fulcrum to create public discussion" *Wolston v. Reader's Digest*
12 *Ass'n*, 443 U.S. 157, 168 (1979). He must "thrust himself into the
13 vortex of [the] public issue [and] engage the public's attention in an
14 attempt to influence its outcome." *Gertz v. Robert Welch, Inc.*, 418
15 U.S. 323, 352 (1974).
16 *Clardy*, 81 Wash. App. at 62. Plaintiff argues she never inserted herself into the
17 proposed merger because she did not seek press attention or make any attempt to
18 publicly influence the merger vote. ECF No. 115 at 20. Defendants counter that
19 Plaintiff campaigned to become president of Local 21, actively pursued the merger,
20 and sought the presidency for Local 3000. ECF No. 110 at 19. Plaintiff lobbied
 UFCW International for approval to engage in formal merger discussions and
 participated in the discussion with Local 21's Board to approve the merger for a
 member vote. ECF No. 128 at 16, 21. In fact, per the UFCW Local Union Merger

1 Kit, a local UFCW president, such as Plaintiff, was the only person with authority
2 to write the UFCW International President requesting approval of the International
3 Executive Committee to engage in formal merger discussions. ECF No. 113-16 at
4 4. Finally, Plaintiff signed a merger agreement after Local 21's Board approved
5 putting the merger to a member vote listing Plaintiff as president of the proposed
6 new union. ECF No. 128 at 18.

7 Plaintiff played a key role in the merging of the two unions. Additionally,
8 Local 21 posted on its webpage a notice of the merger vote and advocated for a
9 vote of approval. ECF No. 10-19 at 2. Given that it was public knowledge
10 Plaintiff was the president of Local 21, as she publicly campaigned for the
11 position, it is reasonable that advocacy for the merger by the union itself came
12 from union leadership. The Court finds Plaintiff's position, role, and activity she
13 undertook in pursuing the union merger satisfies this factor.

14 *3. Sought resolution of outcome*

15 Using a similar argument to the second factor, Defendants contend Plaintiff
16 actively sought the merging of the two unions. ECF No. 110 at 19-20. Limited
17 Washington state case law exists defining how a plaintiff must seek to influence an
18 outcome of a controversy, i.e., whether it must be public or may be private.
19 However, the Court finds Plaintiff adequately sought to influence the outcome in
20

1 both a public and private sense for the same reasons discussed in the previous
2 factor.

3 *4. Prior controversy*

4 As previously discussed, the Court finds a prior controversy existed before
5 Emmons distributed the alleged defamatory statements.

6 *5. Retained public figure status*

7 The facts are undisputed that the merger discussions were initiated and a
8 merger was approved for member vote before the alleged conduct of Emmons
9 distributing the flyers in Spokane occurred. ECF No. 128 at 55. Plaintiff retained
10 her public figure status when the conduct occurred.

11 In reviewing the five-factor test, Plaintiff was a limited public figure with
12 respect to the merger of Local 21 and Local 1439. Courts from other jurisdictions
13 have also had similar holdings in matters of union concern involving union leaders.
14 *See Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 724 (5th Cir. 1980)
15 (secretary-treasurer of Teamsters, a “high-ranking official of a union of
16 tremendous importance to our economy,” was public figure); *Argentine v. United*
17 *Steel Workers Association*, 23 F.Supp.2d 808, 820 (S.D.Ohio 1998) (chief union
18 officers of large local union which had recently received extended media coverage
19 were public figures); *Henry v. National Association of Air Traffic Specialists, Inc.*,
20 836 F.Supp. 1204, 1206 n. 3, 1211 n.6 (D.Md.1993) (plaintiffs qualified as public

1 figures because of prominence as elected and appointed leaders of 1700–member
2 union), *aff'd*, 34 F.3d 1066 (4th Cir.1994); *see also Jesinger v. Nevada Federal*
3 *Credit Union*, No. Civ. S–90–195, 1992 WL 672236, at *2 (D.Nev. March 27,
4 1992) (elected directors of Nevada Federal Credit Union were public figures),
5 *aff'd*, 24 F.3d 1127 (9th Cir.1994).

6 B. Actual Malice

7 Where a plaintiff is a limited public figure, they must “prove with clear and
8 convincing evidence that the defendant made the statements with ‘actual malice.’”
9 *Duc Tan v. Le*, 177 Wash. 2d 649, 668 (2013). “A defendant acts with malice
10 when he knows the statement is false or recklessly disregards its probable falsity.”
11 *Id.* at 669. Neither has been shown in this case.

12 The parties do not dispute that Selvaggio drafted the contents of the flyer
13 based on a discussion he had with Local 555 President Dan Clay. ECF No. 128 at
14 32. Selvaggio later contacted Emmons to hire Emmons’ company, Osprey, to
15 distribute the flyers around Spokane. *Id.* at 43. Selvaggio had known Emmons for
16 almost ten years and had used Osprey for other community outreach projects over
17 the years. *Id.* Selvaggio emailed the flyers to Emmons who both did not know the
18 individuals mentioned in the flyer or have any personal knowledge on the truth of
19 the statements. *Id.* at 47. However, both parties agree that Emmons asked
20 Selvaggio about the credibility of the accusations, and Selvaggio told him there

1 had been investigations. *Id.* at 54. Nothing about these facts suggest Emmons
2 knew the statements were false or disregarded a probable falsity.

3 Plaintiff argues enough circumstantial evidence exists to present a question
4 of whether actual malice was present. Specifically, Plaintiff argues Emmons had
5 hostility toward anyone accused of sexual harassment, he knew the sources of
6 information were hostile toward Plaintiff, and Emmons failed to investigate or
7 verify the flyer's accusations. ECF No. 115 at 21. However, none of this indicates
8 Emmons had reason to believe the information was false. He asked Selvaggio
9 about the flyer's credibility and Selvaggio made no indication that the information
10 was false, indeed, from Emmons' testimony it appears that Selvaggio himself
11 believed the accusations to be true. ECF No. 106 at 96-97. Further, Plaintiff's
12 failure to investigate the truthfulness of the statements is not alone indicative of
13 actual malice, rather "[t]here must be sufficient evidence to permit the conclusion
14 that the defendant in fact entertained serious doubts at the truth of his publication."
15 *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). No such evidence has been
16 presented here. Indeed, little evidence shows Defendant was even negligent in
17 distributing the flyers.

18 //

19 //

1 Plaintiff has failed to prove with clear and convincing evidence Emmons had
2 actual malice in distributing the allegedly defamatory statements. As such,
3 Plaintiff's defamation claim fails.

4 **III. False Light Claim**

5 Only Defendants move for summary judgment as to Plaintiff's false light
6 claim. ECF No. 110 at 25-26.

7 A false light claim arises when someone publicizes a matter that
8 places another in a false light if (a) the false light would be highly
9 offensive to a reasonable person and (b) the actor knew of or
10 recklessly disregarded the falsity of the publication and the false light
11 in which the other would be placed.

12 *Eastwood v. Cascade Broad. Co.*, 106 Wash. 2d 466, 470-71 (1986). "While all
13 false light cases need not be defamation cases, all defamation cases are potentially
14 false light cases." *Id.* at 471. Thus, where a defamation claim fails, a false light
15 claims also fails. *Phillips v. World Pub. Co.*, 822 F. Supp. 2d 1114, 1121 (W.D.
16 Wash. 2011).

17 Because Plaintiff's defamation claim fails, so too does her false light claim.
18 Plaintiff cannot show Defendants "knew of or recklessly disregarded the falsity of
19 the publication."

20 //

//

CONCLUSION

For the foregoing reasons, Plaintiff's motion for partial summary judgment (ECF No. 104) is **denied**. Defendant's motion for summary judgment (ECF No. 110) is **granted**.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Defendant's Motion for Summary Judgment (ECF No. 110) is **GRANTED**.
2. Plaintiff's Motion for Partial Summary Judgment (ECF No. 104) is **DENIED**.
3. Plaintiff's Complaint is **DISMISSED** with prejudice.
4. The deadlines, hearings and trial date are **VACATED**.

The District Court Executive is directed to enter this Order and Judgment accordingly and furnish copies to counsel. This file is CLOSED.

DATED December 11, 2024.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge